

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2007-1353-PST-E   **TCEQ ID:** RN101887891   **CASE NO.:** 34478  
**RESPONDENT NAME:** Delta Bevco, Inc. dba Delta Food 2

Page 1 of 3

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Delta Food 2, 705 Texas Avenue, Bridge City, Orange County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577;     Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171     <b>Respondent:</b> Mr. Ahmer Naeem, President, Delta Bevco, Inc., 705 Texas Avenue, Bridge City, Texas 77611     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 10, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 13, 2007 (NOB)</p> <p><b>Background Facts:</b> This was a routine investigation. Four violations were documented.</p> <p><b>WASTE</b></p> <p>1) Failed to maintain records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request. Specifically, Stage II employee training records, inspection reports and test results were not available for inspection at the time of the investigation [30 TEX. ADMIN. CODE § 115.246(4), (5), and (7)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery (ORVR) compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system. Specifically, the breakaways were installed upside down on dispenser nos. 1 and 2 [30 TEX. ADMIN. CODE § 115.242(3)(L)].</p> <p>4) Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a</p>	<p><b>Total Assessed:</b> \$2,140</p> <p><b>Total Deferred:</b> \$428  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$150 (remaining \$1,562 due in 11 monthly payments of \$142 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Begin maintaining all Stage II records at the Station; and</p> <p>ii. Begin maintaining Stage II vapor recovery system in proper operating condition, including but not limited to, upgrading the Stage II equipment to ORVR compatible systems, proper installation of the breakaways, and posting operating instructions on the front of each gasoline dispensing pump.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. and a.ii.</p>

Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].		
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Additional ID No(s): PST 49045





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	20-Aug-2007	Screening	21-Aug-2007	EPA Due	
	PCW	21-Aug-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	Delta Bevco, Inc. dba Delta Food 2		
Reg. Ent. Ref. No.	RN101887891		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	34478	No. of Violations	2	
Docket No.	2007-1353-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

### TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1  \$2,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History  7% Enhancement Subtotals 2, 3, & 7  \$140

Notes

Enhancement for one previous NOV with same or similar violations and one NOV without a similar violation.

#### Culpability

 No 0% EnhancementSubtotal 4  \$0

Notes

The Respondent does not meet the culpability criteria.

#### Good Faith Effort to Comply

 0% ReductionSubtotal 5  \$0

Extraordinary

Before NOV

NOV to EDPRP/Settlement Offer

Ordinary

N/A

☒ X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

 0% Enhancement\*Subtotal 6  \$0

Total EB Amounts

\$42

Approx. Cost of Compliance

\$1,000

\*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal  \$2,140

### OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment  \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount  \$2,140

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty  \$2,140

### DEFERRAL

 20%

Reduction

Adjustment  -\$428

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

### PAYABLE PENALTY

 \$1,712

Screening Date 21-Aug-2007

Docket No. 2007-1353-PST-E

PCW

Respondent Delta Bevco, Inc. dba Delta Food 2

Policy Revision 2 (September 2002)

Case ID No. 34478

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101887891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one previous NOV with same or similar violations and one NOV without a similar violation.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

<b>Screening Date</b> 21-Aug-2007 <b>Respondent</b> Delta Bevco, Inc. dba Delta Food 2 <b>Case ID No.</b> 34478 <b>Reg. Ent. Reference No.</b> RN101887891 <b>Media [Statute]</b> Petroleum Storage Tank <b>Enf. Coordinator</b> Rajesh Acharya <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1353-PST-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 26, 2007</i>																				
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<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px; min-height: 40px;">           100% of the rule requirement was not met.         </div>																				
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**Economic Benefit Worksheet****Respondent** Delta Bevco, Inc. dba.Delta Food 2**Case ID No.** 34478**Reg. Ent. Reference No.** RN101887891**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	10-Jul-2007	10-May-2008	0.8	\$21	n/a	\$21
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain Stage II records. The Date Required is the investigation date and the Final Date is the expected date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$500

**TOTAL**

\$21



Screening Date 21-Aug-2007

Docket No. 2007-1353-PST-E

PCW

Respondent Delta Bevco, Inc. dba Delta Food 2

Policy Revision 2 (September 2002)

Case ID No. 34478

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101887891

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.242(1)(C), 115.242(3)(L), 115.242(9) and Tex. Health &amp; Safety Code § 382.085(b)

## Violation Description

Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery (ORVR) compatible systems. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system. Specifically, the breakaways were installed upside down on dispenser nos. 1 and 2. Also, failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

42 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date of July 10, 2007 to the screening date of August 21, 2007.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$1,070

This violation Final Assessed Penalty (adjusted for limits) \$1,070

**Economic Benefit Worksheet****Respondent** Delta Bevco, Inc. dba Delta Food 2**Case ID No.** 34478**Reg. Ent. Reference No.** RN101887891**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	10-Jul-2007	10-May-2008	0.8	\$21	n/a	\$21

**Notes for DELAYED costs**

Estimated cost to upgrade the Stage II equipment to ORVR compatible systems, to maintain the Stage II vapor recovery system in proper operating condition and to post operating instructions on dispensers. The Date Required is the date of investigation and the Final Date is the estimated compliance date.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance****\$500****TOTAL****\$21**

# Compliance History

Customer/Respondent/Owner-Operator:	CN601030018	Delta Bevco, Inc.	Classification: AVERAGE	Rating: 4.80
Regulated Entity:	RN101887891	DELTA FOOD 2	Classification: AVERAGE	Site Rating: 4.80
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	49045	
Location:	705 TEXAS AVE, BRIDGE CITY, TX, 77611	Rating Date: 9/1/2006	Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	August 22, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 22, 2002 to August 22, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rajesh Acharya Phone: (512) 239-0577

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 07/11/2005 | (381270) |
| 2 | 10/26/2005 | (418261) |
| 3 | 01/06/2006 | (438555) |
| 4 | 04/12/2006 | (454530) |
| 5 | 08/13/2007 | (568286) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                          |
|--------------|---|--------------------------|
| Date:        | 07/11/2005  | (381270)                 |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.10(b)[G]   |                          |
| Description: | Failure to make overfill prevention records available for the investigation.  |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)  |                          |
| Description: | Failure to equip pressurized piping entering the dispensers with anchored shear valves. B18   |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(4)   |                          |
| Description: | Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility. B3 |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(5)   |                          |
| Description: | Failure to maintain copies of Stage II vapor recovery annual and triennial tests available for review. B3   |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(1)   |                          |

Description: Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility. B3

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(5)

Description: Failure to submit test records to the TCEQ or the Local Program having jurisdiction within 10 working days of the completion of the test(s). B3

Date: 04/12/2006 (454530)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)(G)

Description: Failure to make overfill prevention records available for the investigation.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)(G)

Description: Failure to have overfill prevention equipment for all tanks included in the UST system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DELTA BEVCO, INC. DBA DELTA  
FOOD 2  
RN101887891

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2007-1353-PST-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Delta Bevco, Inc. dba Delta Food 2 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 705 Texas Avenue in Bridge City, Orange County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 18, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand One Hundred Forty Dollars (\$2,140) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").



The Respondent has paid One Hundred Fifty Dollars (\$150) of the administrative penalty and Four Hundred Twenty-Eight Dollars (\$428) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Five Hundred Sixty-Two Dollars (\$1,562) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Forty-Two Dollars (\$142) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to maintain records on-site at the Station ordinarily manned during business hours, and make them immediately available for review upon request, in violation of 30 TEX. ADMIN. CODE § 115.246(4), (5), and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2007. Specifically, Stage II employee training records, inspection reports and test results were not available for inspection at the time of the investigation.





2. Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery (ORVR) compatible systems, in violation of 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2007.
3. Failed to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(L), as documented during an investigation conducted on July 10, 2007. Specifically, the breakaways were installed upside down on dispenser nos. 1 and 2.
4. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 10, 2007.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Delta Bevco, Inc. dba Delta Food 2, Docket No. 2007-1353-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246; and
    - ii. Begin maintaining Stage II vapor recovery system in proper operating condition, including but not limited to, upgrading the Stage II equipment to ORVR



compatible systems, proper installation of the breakaways, and posting operating instructions on the front of each gasoline dispensing pump, in accordance with 30 TEX. ADMIN. CODE § 115.242.

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent



receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



Attention:  
MR. Rajesh

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

12/14/07  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

10-15-07  
Date

AMER NAEEM  
Name (Printed or typed)  
Authorized Representative of  
Delta Bevco, Inc. dba Delta Food 2

PRESIDENT  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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